

Joanna R. Vilos (Wyo. State Bar No. 6-4006)
HOLLAND & HART LLP
2515 Warren Avenue, Suite 450
P.O. Box 1347
Cheyenne, WY 82003-1347
307.778.4200
jvilos@hollandhart.com

Gregory E. Goldberg (*admitted pro hac vice*)
HOLLAND & HART LLP
555 Seventeenth Street, Suite 3200
P.O. Box 8749
Denver, CO 80202
303.295.8099
ggoldberg@hollandhart.com

ATTORNEYS FOR DEFENDANT
DUKE ENERGY RENEWABLES, INC.

**IN THE UNITED STATE DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

UNITED STATE OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Criminal No. 13-CR-268-R
)	
DUKE ENERGY RENEWABLES, INC.)	
)	
Defendant.)	
)	

DEFENDANT’S FIRST ANNUAL PROBATIONARY REPORT

INTRODUCTION

Pursuant to the plea agreement (Doc. 2 § 15(b)(i)) (“Agreement”) and the judgment (Doc. 8 at 2 & attach. B thereto), defendant Duke Energy Renewables, Inc. (“DER”) submits this report to the Court, the U.S. Fish & Wildlife Service (“USFWS”), and the U.S. Department of Justice by and through the U.S. Attorney, District of Wyoming and the Environment and Natural

Resources Division (collectively, “Department”) concerning the DER’s progress in implementing the Migratory Bird Compliance Plan (“MBCP”). Pursuant to the plea and judgment, DER agreed to implement the MBCP with the assistance of the USFWS and Department. The MBCP is attached as Attachment B to both the plea and judgment.

SUMMARY

Since sentencing on November 22, 2013, DER has made substantial progress in implementing the MBCP. At the conclusion of this first year of probation, DER asserts it has met all applicable deadlines and performed all required tasks due to be completed within 12 months of sentencing. The Department and USFWS have informed DER that they concur with this assertion, based on information known at the time of this filing. Additional deadlines and tasks required to be completed within 24 months of sentencing or later will be addressed as applicable in future annual reports.

JUDGMENT REQUIREMENTS

The judgment imposed a sentence of unsupervised probation for a term of sixty (60) months. Consistent with its conditions of probation, DER has:

- paid its special assessment, fine, and restitution payments as ordered by the Court;
- performed its community service by making the required payments;
- met with the USFWS and the Department on April 29, 2014, and on October 21, 2014, to discuss DER’s progress in implementing the MBCP and to address any issues or amendments necessary to ensure the MBCP’s effectiveness; and
- developed and is in the process of implementing the MBCP, as described in more detail below.

MBCP REQUIREMENTS

Under the MBCP, DER is required to undertake certain tasks within 3, 6, 12, 18, and 24 months of sentencing, which occurred on November 22, 2013. Following is an assessment of DER's progress in implementing the MBCP.¹

1. Bird and Bat Conservation Strategy ("BBCS"). DER completed an initial revision of the BBCSs for each of the four wind sites covered under the Agreement in accordance with the 2012 USFWS Land-Based Wind Energy Guidelines ("LBWEGs"). As contemplated under the MBCP, "the BBCS can be written and revised in stages, over time, as analysis and studies are undertaken for each Tier." DER coordinated with USFWS with these revisions, including several exchanges and subsequent discussion of comments and edits.

1.1 Inclusion of Tier 1-5 information into the BBCSs: The revisions of the BBCSs included the elements of Tiers 1-5 that DER had collected to that point.

1.2 BBCS's are life-of-project documents, subject to periodic revision: No action required.

1.3 Studies, surveys, data collection, practicable avoidance, minimization, and mitigation measures, Eagle Conservation Plan information, etc., will be incorporated into BBCSs: No action required at this time.

1.4 Initial revisions of BBCSs to be completed within 12 months of sentencing: Completed. The narrative and all appendices of the four revised BBCSs were uploaded to the DER external SharePoint site on or before March 24, 2014. Notification of availability of the revised BBCSs on the external SharePoint site was provided to the USFWS and the Department via electronic mail on March 24, 2014.

2. Tier 5 Golden Eagle Analysis. As noted in the MBCP, DER has collected a significant amount of Tier 2, 3, 4, and 5 data as identified in this section.

2.1 Focus of MBCP shall be on golden eagles at the Top of the World (TOTW) wind project and Campbell Hill (CHW) wind project: No action required

2.2 Analysis of Tier 2-5 data to be completed within 12 months of sentencing: Completed. A Tier 5 Golden Eagle Analysis report for the TOTW wind project and

¹ For ease of review, section citations below correspond to sections of the MBCP.

CHW project was completed and provided via U.S. mail to USFWS and the Department on October 31, 2014 by DER. The full report and appendices also have been uploaded to DER's external SharePoint site.

2.3 Additional data collection and use: Ongoing, no specific action required at this time.

3. Experimental Advanced Conservation Practices.

3.1 Measures to be implemented at the four sites (TOTW, CHW, Happy Jack Wind site (HJW), and Silver Sage Wind site (SSW)):

3.1.1 Carrion removal: Implemented upon the date of sentencing and is an ongoing practice.

3.1.2 Removal of man-made habitat features that may harbor prey species: Completed. DER completed a survey and assessment of potential manmade habitat features that may harbor lagomorphs (rock piles, debris piles, etc.) or fossorial mammals at the four wind sites. No such features were identified. A report of this survey and assessment was provided to the USFWS and the Department via U.S. mail on October 31, 2014. Data sheets and photos documenting the findings of this survey and assessment are located on DER's external SharePoint site.

3.2 Best Management Practices and other single-event actions to be implemented at TOTW.

3.2.1 Removal of roadkill carcasses along SR 95: Implemented within 90 days of sentencing and ongoing at a weekly frequency. Weekly data sheets have been uploaded to DER's external SharePoint site.

3.2.2 Removal of two guyed meteorological towers: Completed. The two meteorological towers were removed by DER on July 22, 2014.

3.2.3 Adjusted Wind Turbine Operation (AWTO) March 15 – October 15: Work in progress, as this measure shall be implemented by March 15, 2015. MBCP § 3.2.3. Note, DER is already operating GE turbines in this manner.

3.3 Ongoing Experimental Advanced Conservation Practices to be implemented at TOTW.

3.3.1 Visual deterrent testing: A visual deterrent test funded by DER and done in cooperation with the American Wind Wildlife Institute and The Peregrine Fund was performed to evaluate the efficacy of ultraviolet light stimulus to deter golden eagles. Results of this test

were provided to the USFWS and the Department via U.S. mail on October 31, 2014. The report has also been uploaded to the DER external SharePoint site. DER also evaluated a variety of visual deterrent options (including blade painting per 3.3.1.2) and provided a report of this evaluation to the USFWS and Department via U.S. mail on October 31, 2014.

3.3.2 Audible deterrent testing: An audible deterrent test was performed at the TOTW site in July 2014. Results of this test were provided to the USFWS and Department via U.S. mail on October 31, 2014. The report has also been uploaded to the DER external SharePoint site. DER also evaluated a variety of audible deterrent options and provided a report of this evaluation to the USFWS and Department via U.S. mail on October 31, 2014. Both visual and audible deterrent evaluations are included in the same report.

3.3.3 “Informed Curtailment” at TOTW: Informed eagle curtailments at the TOTW site were initiated ahead of schedule by DER on March 5, 2014 and have been ongoing at TOTW since. USFWS and DER worked cooperatively to develop an interim protocol for informed eagle curtailment. Further improvements and refinements (including the construction of an eagle observation tower) have been completed with additional improvements ongoing with experience.

3.3.4 Test detection technologies at TOTW.

3.3.4.1 Radar proof-of-concept test: Completed. A Tier 5 SRC radar proof-of-concept report titled “BSTAR Duke Energy Renewables Radar Final Report” was provided by DER to the USFWS and Department via electronic mail on March 13, 2014.

3.3.4.2 Radar study evaluation: Ongoing, per requirement. No material advancements of radar technology have been identified by DER. DER is having ongoing discussions with the USFWS on this issue and they have concurred with this assessment.

3.3.4.3 Consideration of combining detection/deterrent technologies: Ongoing, per requirement. DER is still in the evaluation phase of the detection/deterrent requirement. DER has initiated a Request for Information to the public. DER is evaluating the responses. DER plans to discuss the proposals with the USFWS. DER is coordinating with the American Wind Wildlife Institute and has had discussions with the

Department of Energy through their 2014 Request for Information solicitation. DER is also working cooperatively with USFWS on the trapping and fitting of golden eagles with GPS tracking devices on the TOTW site. This technology may lead to enhanced detection capabilities for resident golden eagles.

3.4 Implementation of Experimental Advanced Conservation Practices (ACPs): Informed legal curtailments are ongoing at the TOTW site. The evaluation of other experimental ACPs is ongoing to determine if they are scientifically proven to reduce golden eagle fatalities at TOTW.

3.5 Development and evaluation of other Experimental Advanced Conservation Practices: DER is working with several technology providers, non-government organizations and the government to evaluate other experimental ACPs.

4. Monitoring. DER worked cooperatively with the USFWS on the development of a fatality monitoring protocol. This protocol was finalized by DER on August 15, 2014, and the monitoring began on September 15, 2014.

4.1 Research.

4.1.1 – 4.1.4 Searcher-efficiency and carcass-persistence, trials, bias-correction development: DER continues to work cooperatively with USFWS on the development of a research protocol.

4.2 Golden eagle fatalities.

4.2.1 Notification within 24 hours of golden eagle fatalities at TOTW, CHW, Happy Jack and Silver Sage wind projects: Ongoing, per requirement. DER has reported four golden eagle carcasses to USFWS within 24 hours of DER knowledge of discovery since the date of sentencing.

4.2.2 Special Purpose – Utility (SPUT) permit: DER applied for and received SPUT permits for the four Wyoming wind sites. Permits were received on September 17, 2014.

4.3 Use of Ornicept/Geotraverse monitoring software: Implemented within 90 days of sentencing as required and is ongoing. Eagle fatalities that have occurred since the date of sentencing and the analysis of manmade habitat features utilized the Ornicept/Geotraverse software.

4.4 Continued Monitoring of golden eagle and other migratory bird fatalities: Ongoing, per requirement.

5. Compensatory Mitigation.

5.1 Development of Compensatory Mitigation methods during probation period: At the annual meeting that was held in Cheyenne, Wyoming between DER, USFWS, and the Department on October 21, 2014, compensatory mitigation options were discussed.

5.2 Compensatory mitigation following issuance of an Eagle Take Permit: No action required at this time, as Eagle Take Permit have not yet been issued.

5.3 Exclusion of compensatory mitigation costs from MBCP cost cap: No action required.

5.4 Compensatory mitigation methods: No action required at this time.

5.5 Analysis of other compensatory mitigation techniques: Ongoing, per requirement. To date, in addition to power pole retrofits, DER has started the evaluation of habitat-based protection/enhancement and roadkill removal as potential compensatory mitigation for golden eagles.

6. Eagle Conservation Plan/Eagle Take Permits. DER initiated the development of an Eagle Conservation Plan (ECP) for the CHW and TOTW sites. Communication and coordination with the USFWS on the development of these ECPs are ongoing.

7. MBCP Term: No action required.

DATED: November 21, 2014.

Respectfully submitted,

/s/ Joanna R. Vilos

Joanna R. Vilos (Wyo. State Bar No. 6-4006)

HOLLAND & HART LLP

2515 Warren Avenue, Suite 450

P.O. Box 1347

Cheyenne, WY 82003-1347

Telephone: 307.778.4200

jvilos@hollandhart.com

/s/ Gregory E. Goldberg

Gregory E. Goldberg (*admitted pro hac vice*)

HOLLAND & HART LLP

555 Seventeenth Street, Suite 3200

P.O. Box 8749

Denver, CO 80202

303.295.8099

ggoldberg@hollandhart.com

Attorneys for Duke Energy Renewables, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on November 21, 2014, I electronically filed the foregoing with the Clerk of the Court using CM/ECF, which will send notification of such filing to all counsel of record:

Jason Condor
Assistant U.S. Attorney
United States Attorney's Office
Post Office Box 449
Lander, WY 82520-0449
jason.condor@usdoj.gov

and via US Mail to:

Robert S. Anderson
Senior Counsel, Environmental Crimes Section
Environment and Natural Resources Division
U.S. Department of Justice
105 East Pine Street, 2nd Floor
Missoula, MT 59802

Casey Stemler
Chief, Region 6 Migratory Bird Management
U.S. Fish & Wildlife Service
Post Office Box 25486
Denver Federal Center (60154)
Denver, CO 80225

/s/ Joanna R. Vilos

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